

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IVALDO LENCI,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

Case No. [19-cv-06526-TSH](#)

**ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE**

I. INTRODUCTION

Plaintiff Ivaldo Lenci filed this case against Defendant United States of America over one year ago and, after repeated delays, served the government four months later. The government responded by filing a motion to dismiss, which the Court granted the motion with leave to amend. Since that time, however, Lenci has filed five requests for an extension of time to amend. For the reasons explained below, the Court finds Lenci has failed to prosecute and therefore **DISMISSES** this case pursuant to Federal Rule of Civil Procedure 41(b) **WITHOUT PREJUDICE**.

II. BACKGROUND

Lenci filed his complaint on October 10, 2019, setting forth his vision for a better government. ECF No. 1. He began with a history of “the law of nature” and then declared

“It is my understanding the Constitution and Declaration of Independence of the U.S.A. dictates its government to make available to their citizens the proper: Education, Health Care, Welfare, Security to implement ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness...’ to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.”...

Compl. ¶ 7 (ellipses in original). Lenci did not identify any causes of action or identify any

particular way in which he was allegedly wronged, other than expressing his general unhappiness with the City of San Rafael's assessment of \$7,949.26 in property taxes related to the home he owns in San Rafael, referring to it as "LEGAL SLAVERY." *Id.* ¶ 30. Instead Lenci devoted the nine-page, single-spaced pleading to his ideas for better government. He alleged that "[a]fter studying all the major religions of the world; the economy of Communism, Democracy, Monarchy, Republic, etc., [he] found out that all of them have some good merit but the United States Constitution and Declaration of Independence is the best." *Id.* ¶ 20. Lenci "selected" and proposed "what [he] believes to be their good merits to form . . . a workable government that will promote peace, security and prosperity in the world." *Id.* ¶ 21.

Lenci went on to make some specific suggestions for this "new and better" government, including:

- Making "[o]ur God-Creator" "part of this government" (*id.* ¶ 24);
- Referring to "each human being" "with the title of prince or princess" (*id.* ¶ 38);
- Providing each household \$125,000 to "create a family crest" (*id.* ¶ 38);
- Implementing a "flat tax," which taxes consumption and not income (*id.* ¶¶ 41, 65-69);
- Eliminating property taxes on people's homes (*id.* ¶ 70);
- Providing universal health care (*id.* ¶ 43); and
- Providing pensions to the disabled and elderly (*id.* ¶¶ 44-45).

On January 6, 2020, as there was no indication Lenci had served the government, the Court ordered him to file a status report by January 22, 2020. ECF No. 6. In his response, Lenci stated he had been taking care of his wife in the hospital and requested additional time to serve the government. ECF No. 7. Based on his response, the Court extended the service deadline to February 18, 2020. ECF No. 8. The Court advised Lenci that it may dismiss his case for failure to prosecute if proper service is not completed by this deadline. Lenci served the government on February 12, 2020. ECF No. 12.

On April 13, 2020, the government moved to dismiss Lenci's complaint under Federal Rules of Civil Procedure 12(b)(1) and (b)(6), arguing he lacked standing to proceed because he did not identify any way in which he suffered a legally cognizable harm and failed state a claim

1 against the United States because he did not identify a single cause of action or the basis of a
 2 waiver of sovereign immunity. ECF No. 14. On May 5, 2020, the Court granted the
 3 government's motion, finding his generalized grievances and suggestions for better government
 4 were not sufficient to establish his standing to maintain a lawsuit in federal court. ECF No. 23.
 5 The Court found Lenci lacked standing to pursue his generalized grievances and suggestions for
 6 better government. *Id.* at 4-5 (citing *Valley Forge Christian Coll. v. Ams. United for Separation of*
 7 *Church & State, Inc.*, 454 U.S. 464, 473 (1982); *Carroll v. Nakatani*, 342 F.3d 934, 940 (9th Cir.
 8 2003)). The Court granted Lenci an opportunity to file an amended complaint by June 2, 2020,
 9 advising him that he must (1) demonstrate a basis for federal subject matter jurisdiction, (2) state
 10 as clearly as possible the facts giving rise to the complaint and explain why each named defendant
 11 is being sued by making specific factual allegations that connect each defendant with the alleged
 12 wrongdoing, and (3) allege separate causes of action, state a constitutional or statutory basis for
 13 each cause of action, and allege facts showing each defendant's wrongful acts alleged in each
 14 cause of action, as well as his harm or injury. *Id.* at 6. The Court also advise him that, unless it
 15 has expressly waived its sovereign immunity, the United States and its agencies are immune from
 16 suit. *Id.* (citing *Federal Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 474 (1994); *FAA v. Cooper*,
 17 566 U.S. 284, 290 (2012)). Finally, the Court warned Lenci that this action would likely be
 18 dismissed for failure to prosecute if he failed to file an amended complaint by the deadline. *Id.* at
 19 7.

20 On June 11, 2020, as Lenci had not filed an amended complaint or otherwise responded to
 21 its order, the Court ordered him to show cause by June 29 why his case should not be dismissed
 22 pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply
 23 with court deadlines. ECF No. 24. In response, Lenci requested more time to amend, stating that
 24 he was having trouble filing his amended complaint electronically. ECF No. 25. Based on his
 25 response, the Court discharged the show cause order and directed him to file his amended
 26 complaint by July 6, 2020. ECF No. 26. The Court reminded Lenci that failure to comply with
 27 this deadline may result in dismissal for failure to prosecute.

28 On July 6, 2020, Lenci filed a "Reply to Show Cause," stating that his computer crashed,

1 his email password was stolen and changed, and his son was now helping him because he was
2 having medical issues. ECF No. 27. The Court construed the filing as a request for additional
3 time and extended the deadline to file any amended complaint to July 31, 2020, again reminding
4 him that failure to comply with this deadline may result in dismissal for failure to prosecute. ECF
5 No. 28.

6 On July 31, 2020, Lenci filed a third request for an extension of time, stating that his wife
7 had passed away and he requested a case report from the Marin County Coroner but had not yet
8 received it. ECF No. 29. The Court granted the request and extended the deadline to file an
9 amended complaint to August 27, 2020. ECF No. 30. However, the Court noted that the case had
10 been pending since October 2019 and had seen multiple delays due to Lenci's repeated requests to
11 extend time both to serve the government and to file an amended complaint. *Id.* (citing ECF Nos.
12 8, 24, 26, 28). As such, the Court advised him that it would be unlikely to grant any further
13 extensions and his failure to comply with the August 27 deadline would likely result in dismissal
14 for failure to prosecute.

15 Despite this warning, Lenci filed a fourth request for an extension on August 27, 2020,
16 stating that his wife's death had resulted in major health issues for which he was undergoing
17 testing and possible surgery. ECF No. 31. Although the Court previously admonished him that it
18 was unlikely to grant any further extensions, the Court found that, given his health issues, Lenci
19 had shown good cause and therefore extended the deadline to file an amended complaint to
20 October 27, 2020. ECF No. 32. However, the Court reminded him that his case would likely be
21 dismissed if he failed to comply with the deadline.

22 Lenci has now filed a fifth request for an extension, stating he had received the coroner's
23 report from his wife's death and accusing Marin General Hospital of intentionally killing her by
24 taking her off life support against her family's wishes. ECF No. 33. Lenci spends the next nine
25 pages of his request detailing evidence of why his wife should not have been taken off life
26 support.

27 **III. LEGAL STANDARD**

28 Under Rule 41(b), "the district court may dismiss an action for failure to comply with any

order of the court.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992); *see also Oliva v. Sullivan*, 958 F.2d 272, 273-74 (9th Cir. 1992) (district court may dismiss sua sponte for failure to meet court deadline). “The Court must weigh the following factors in determining whether a Rule 41(b) dismissal is warranted: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). Dismissal is appropriate “where at least four factors support dismissal . . . or where at least three factors ‘strongly’ support dismissal.” *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998).

IV. DISCUSSION

The first two *Henderson* factors strongly support dismissal. First, “the public’s interest in expeditious resolution of litigation always favors dismissal.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Second, the Court’s need to manage its docket also weighs in favor of dismissal. Lenci has repeatedly delayed this case, both through his failure to serve the government in compliance with Federal Rule of Civil Procedure 4 and his failure to file an amended complaint, despite four extensions of time. Non-compliance with procedural rules and the Court’s orders wastes “valuable time that [the Court] could have devoted to other . . . criminal and civil cases on its docket.” *Ferdik*, 963 F.2d at 1261; *Pagtalunan*, 291 F.3d at 642 (“It is incumbent upon the Court to manage its docket without being subject to routine noncompliance of litigants”).

As for the third *Henderson* factor, the mere pendency of a lawsuit cannot constitute sufficient prejudice to require dismissal. *Yourish*, 191 F.3d at 991. However, “prejudice . . . may . . . consist of costs or burdens of litigation.” *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006). Moreover, “a presumption of prejudice arises from a plaintiff’s unexplained failure to prosecute.” *Laurino v. Syringa Gen. Hosp.*, 279 F.3d 750, 753 (9th Cir. 2002). A plaintiff has the burden of demonstrating a non-frivolous reason for failing to meet a court deadline. *Id.*; *Yourish*, 191 F.3d at 991. Here, Lenci’s requests for extensions of time

1 have changed from not being able to electronically file his amended complaint against the
 2 government to what appears to be wrongful death allegations against Marin General Hospital,
 3 which would be the subject of a separate lawsuit. As to the original claims against the
 4 government, he fails to provide any explanation for why he is unable to file an amended complaint
 5 that, based on his filings in June 2020, he had apparently drafted but was unable to electronically
 6 file. *See* ECF No. 25. Therefore, the Court concludes the third *Henderson* factor also supports
 7 dismissal.

8 The fourth *Henderson* factor, that public policy favors disposition of cases on their merits,
 9 normally weighs strongly against dismissal. *See Hernandez*, 138 F.3d at 399 (“[T]he public policy
 10 favoring resolution on the merits clearly counsels against dismissal.”) (citation omitted);
 11 *Pagtalunan*, 291 F.3d at 643 (“Public policy favors disposition of cases on the merits. Thus, this
 12 factor weighs against dismissal.”). “At the same time, a case that is stalled or unreasonably
 13 delayed by a party’s failure to comply with deadlines . . . cannot move forward toward resolution
 14 on the merits.” *In re PPA*, 460 F.3d at 1228. The Ninth Circuit has “recognized that this factor
 15 ‘lends little support’ to a party whose responsibility it is to move a case toward disposition on the
 16 merits but whose conduct impedes progress in that direction.” *Id.* (quoting *In re Exxon Valdez*,
 17 102 F.3d 429, 433 (9th Cir. 1996)). Thus, although this factor weighs against dismissal, the Court
 18 also recognizes that Lenci has repeatedly delayed the prosecution of this case, which has had no
 19 operative pleading for nearly six months. Further, although “pro se litigants in the ordinary civil
 20 case should not be treated more favorably than parties with attorneys of record,” *Jacobsen v.*
 21 *Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986), the Court has already granted him four extensions of
 22 time. Accordingly, this factor lends little support to Lenci’s cause.

23 Finally, the Court has already attempted less drastic sanctions without success, including
 24 issuing a show cause order and giving Lenci multiple extensions. “Though there are a wide
 25 variety of sanctions short of dismissal available, the district court need not exhaust them all before
 26 finally dismissing a case.” *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981); *see*
 27 *also Gleason v. World Sav. Bank, FSB*, 2013 WL 3927799, at *2 (N.D. Cal. July 26, 2013)
 28 (finding dismissal under Rule 41(b) appropriate where the court previously attempted the lesser

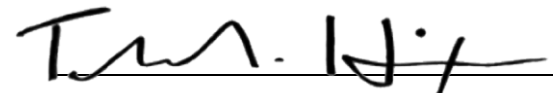
1 sanction of issuing an order to show cause and giving the plaintiff an additional opportunity to re-
2 plead). Moreover, the Court has repeatedly warned Lenci of the risk of dismissal; thus, he cannot
3 claim the Court failed in its “obligation to warn the plaintiff that dismissal is imminent.” *Oliva*,
4 958 F.2d at 274; *Ferdik*, 963 F.2d at 1262 (“a district court’s warning to a party that his failure to
5 obey the court’s order will result in dismissal can satisfy the consideration of alternatives
6 requirement.”) (citation and quotations omitted). Accordingly, the final factor weighs in favor of
7 dismissal.

8 V. CONCLUSION

9 Based on the analysis above, the Court finds at least four of the five *Henderson* factors
10 weigh in favor of dismissal. Dismissal is appropriate because Lenci has failed to prosecute this
11 case, despite multiple extensions of time. However, a less drastic alternative is dismissal without
12 prejudice, which both minimizes prejudice to a defendant and preserves a plaintiff’s ability to seek
13 relief. *See Ferdik*, 963 F.2d at 1262. Thus, “[i]n an abundance—perhaps overabundance—of
14 caution,” the Court finds dismissal without prejudice is appropriate. *Faulkner v. ADT Sec. Servs.,*
15 *Inc.*, 706 F.3d 1017, 1021 (9th Cir. 2013) (remanding to the district court in order to consider
16 whether dismissal should have been without prejudice). Accordingly, this case is **DISMISSED**
17 **WITHOUT PREJUDICE.**

18 **IT IS SO ORDERED.**

19
20 Dated: October 28, 2020



THOMAS S. HIXSON
United States Magistrate Judge